IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPEAL NO.29 OF 1995

Nivrutti Tatyaba Ghadge
Age 50 Years, Occupation:
Service, Residing at Gautam
Nagar, Taluka Baramati, Dist.
Pune. ..Appellant
(Org.Accused)

Vs.

The State of Maharashtra .. Respondent

Mr. P.B. Shah for the appellant.
Ms. P.H. Kantharia, APP for Respondent-State.

CORAM: S.S. PARKAR & ANOOP V. MOHTA, JJ.

Date : February 10, 2005.

ORAL JUDGMENT (PER S.S. PARKAR,J.):

1. This appeal is filed by the appellant who was convicted for the offence of murder of his own wife by burning her and also for the offences of wrongful confinement, intentional insult and assault by the Addl. Sessions Judge, Baramati, Pune by his Judgment and Order dated 25/11/1994 in Sessions Case No.31 of 1991.

2. Briefly stated the prosecution case is as follows:-

. The incident took place in the matrimonial

house of the deceased Mangal on 12/12/1990 when her husband, the appellant is alleged to have beaten her and poured kerosene on her person and then set her on fire in the afternoon. The couple was residing in Gautam Nagar, Baramati, Pune along with their children. The relations of deceased Mangal i.e. her parents, sister and brother were also residing in her neighbourhood in the same locality. The appellant, who was formerly working in Military, had taken the job as a driver. He was addicted to drinks and was doubting the chastity of his wife Mangal. There used to be quarrels between the husband and wife very often. On the day of the incident also the appellant was quarrelling with Mangal and was beating her. As her mother and other relations heard the quarrel and saw appellant beating his wife Mangal, Mangal's mother went to the police station to lodge complaint against the appellant. Meantime, the appellant had poured kerosene on the person of Mangal and set her ablaze and tried to run away. Mangal was immediately removed to the Silver Jubilee Hospital in an autorickshaw by her bother and sister. From the hospital intimation was given on telephone to the police station, pursuant to which S.E.M. Nilakhe P.W.4 was called to record the statement of Mangal. P.I. Ghag P.W. 8, who was at the relevant time attached to Baramati Police

Station also rushed to the said hospital at about 3.30 p.m. and recorded the statement of Mangal in which Mangal stated that appellant used to suspect her chastity and was ill-treating her and beating her since previous six months. She further stated that on 12/12/1990 at about 2.45 p.m. the appellant abused and beat her, then latched the door from inside and alleging that she was having illicit relationship with others poured kerosene on her person and set her on fire by lighting matchstick. The appellant immediately wanted to run away after opening the door but she followed him and, therefore, accused sustained burn injuries to his hands. Hearing her screams her sister Asha, Sadashiv, husband of Asha and her brother Yuvraj arrived there and extinguished the fire by pouring water on her person.

3. Thereafter S.E.M. Nilakhe P.W.4 also arrived in the hospital and recorded her statement in which also she implicated her husband as aforesaid. On the basis of the statement of Mangal, crime was registered against the accused. The statements of the witnesses were recorded immediately on the same day of the incident. Mangal died on 15/12/1990. After the death of Mangal post mortem examination was performed on her

dead body. Her clothes were sent to C.A. for examination. The accused, who was admitted to the hospital for injuries on his person, was arrested on 18/12/1990. After the completion of the investigation charge-sheet was filed and the case was committed to the Sessions Court.

4. Before the Sessions Court charges were framed against the appellant for offences under Sections 302, 342, 504 and 323 of IPC, to which he pleaded not guilty. On behalf of the prosecution 9 witnesses were examined. P.W.1 is Asha Randive, the sister of deceased Mangal who was residing in the neighbourhood. P.W. 2 is Yuvraj Kamble, the brother of Mangal who was also residing in the vicinity of Mangal along with her mother Chandrabai Kamble who was examined as P.W.3. P.W.4 is S.E.M. Jayant Nilakhe who had recorded dying declaration Exh.21. P.W.5 is Head Constable Hanumant Jawale, who had proved previous N.C. Complaint Exh.24 lodged by Mangal on 29/8/1990. P.W.6 is Head Constable Narayan Madane, who had received the complaint of Chandrabai, mother of deceased Mangal that appellant was beating Mangal. P.W. 7 is Dr. Sonawane, who was attached to Silver Jubilee Hospital and had performed post mortem

examination on the dead body. P.W.8 is P.I. Vilas Ghag, who had recorded dying declaration Exh.28 immediately after Mangal was admitted to the hospital and also prepared spot panchanama Exh.9 same afternoon. Lastly, P.W.9 is Sub Divisional Police Officer, Baramati Dnyaneshwar Phadtare who had taken over investigation same evening and completed the investigation in the matter and filed charge-sheet. The defence of the accused was that on the date of the incident at about 2 p.m. Mangal wanted to prepare tea by lighting stove. She caught fire from the high flames of the stove. When he raised alarm P.W.1 Asha, P.W.2 Yuvraj and P.W.3 Chandrabai came there and they attacked him as a result of which he received injuries and false case was lodged against him.

5. After considering the entire evidence on record the learned Addl. Sessions Judge, Baramati, Pune by impugned judgment and order dated 25/11/1994 convicted the appellant for offences under Sections 302, 323, 342 and 504 of IPC and sentenced him to life imprisonment for offence under Section 302 of IPC without imposing any separate sentence in respect of the other offences for which the appellant was convicted. The said judgment and order of conviction

and sentence recorded against the appellant is under challenge in this appeal filed by the appellant.

6. Mr. Shah appearing for the appellant contended that the prosecution has not explained the injuries on the person of the accused. Secondly he argued that the doctor had given only one endorsement after recording the statements of the deceased Mangal and in the absence of endorsement before recording the dying declarations the same cannot be relied on by the prosecution.

7. We have gone through the entire evidence on record. Apart from the immediate dying declarations recorded by the Police Inspector and S.E.M. after Mangal was admitted to the hospital, there is evidence of her close relations like sister, brother and mother about the incident in question. The deceased Mangal had also made oral dying declaration to the above witnesses implicating her husband. The prosecution has proved the motive against the appellant. The appellant was suspecting chastity of Mangal because of the difference in the age of the couple. He used to very often illtreat her and also beat her. On the

date of the incident also the appellant had quarrelled with her and assaulted her which is reflected in the evidence of her mother and sister. Sister P.W.1 has deposed that there were bleeding injuries and blood was oozing from her mouth just before she was set ablaze by the appellant.

8. P.W.1 Asha, who was the sister of deceased Mangal, was residing in the same locality where deceased Mangal was residing along with her husband and children. She has deposed that Mangal's marriage with the appellant was his third marriage. He was earlier married twice with other women. Mangal was having two issues from him, one daughter and one son, who were studying in the school. Mangal used to complain to her about the ill-treatment meted out to her by her husband as he was doubting her chastity. She has deposed that Mangal had previously lodged police complaint against the appellant because of which he was arrested by the police. She has further deposed that in previous six months prior to the incident also Mangal had lodged complaint against her husband. On the date of the incident when she heard the quarrel between the appellant and Mangal at about 2.15 p.m. she went to Mangal's house along with her

10 year old son Vaibhav. That time Mangal was washing her mouth as she was having bleeding injuries on her mouth. Accused was sitting in front of the door of his house. Accused then went inside the house and shut the door and latched it from inside. Thereafter she heard screams of Mangal crying for help to save her. She smelled of kerosene. Then her husband Sadashiv, her brother Yuvraj, Kalpana the wife of Yuvraj came there. The accused opened the door. Mangal was seen in flames. Accused wanted to run away but the witness caught him. Her brother Yuvraj and her husband Sadashiv extinguished the fire by pouring water on the person of Mangal and throwing quilt around her body. Mangal was thereafter taken to the hospital in an autorickshaw. Her brother Yuvraj, who was examined as P.W.2 has corroborated her evidence. When Yuvraj heard screams of Mangal, he rushed to the house of Mangal. He saw smoke coming out of the house of Mangal. He poured water on Mangal's person and brought rickshaw in which Mangal was taken to the hospital.

9. Then there is evidence of Mangal's mother Chandrabai, P.W.3, who has also deposed about the ill-treatment meted out to her daughter Mangal by the

appellant. According to her, on the day of the incident when the appellant was beating his wife Mangal, she went to Baramati Police Station to lodge complaint but there the police officers were busy and, therefore, she was asked to wait. When she was returning she saw her daughter Mangal being taken in an autorickshaw to the hospital. She also went to the hospital. Dr. Gaikwad was there. Mangal told her that her husband poured kerosene oil on her person and set her on fire. It is pertinent to note that the statement of all these three relatives of Mangal was recorded on the same day in the afternoon and no omission has been brought on the record in the cross-examination of any of these witnesses as regards the incident in question and about the motive. Thus apart from the dying declarations Exhs.21 and 28 recorded by the S.E.M. and P.I. Ghag respectively, these three witnesses have corroborated written dying declarations by deposing about the oral dying declaration made to them by Mangal. In fact, P.W.1 Asha had been to the house of Mangal before latter was set on fire and in her presence accused latched the door from inside and thereafter she heard Mangal’s screams and saw her in flames when the door was opened.

10. There is also corroboration to the aforesaid evidence by the spot panchanama Exh.9 which was drawn in the same afternoon by P.I. Ghag who recorded the statement of Mangal immediately after she was admitted to the hospital which is at Exh.28. In the spot panchama Exh.9 there is mention that there was smell of kerosene in the house which was found spread on the floor and empty can of kerosene was attached under the said panchanama, apart from the burnt pieces of blouse and saree of the deceased.

11. So far as the dying declaration Exh.21 is concerned, P.W.4 S.E.M. Nilakhe has deposed that he was called by the police station that afternoon for recording statement of one Mangal Nivrutti Ghadge and accordingly he had gone to the hospital at about 3.30 p.m. That time he contacted Dr. Gaikwad who was on duty. He was near the bed side of Mangal. On enquiry Dr. Gaikwad told him that Mangal was in a fit state to give statement. He identified Mangal. Then he recorded the statement of Mangal which is produced at Exh.21. There is endorsement of the doctor at the end of the statement that she was in a fit condition to make a statement. He has obtained the thumb

impression of Mangal as her fingers were burnt. He has proved the endorsement of Dr. Gaikwad. The endorsement of Dr. Gaikwad was also proved by Dr. Sonawane P.W.7 who was attached to the said hospital and had also performed autopsy on the dead body. P.W.7 Dr. Sonawane, who was attached to the same hospital, was knowing the hand writing and signature of Dr. Gaikwad. He has proved that the said endorsement of fitness on the two dying declarations Exhs.21 and 28 were made by Dr. Gaikwad.

12. Similarly P.W.8 P.I. Ghag also has deposed that when he was told by P.W.5 Head Constable Hanumant that there was telephonic message that one Mangal Nivrutti Ghadge was admitted to the Silver Jubilee Hospital as burn case, he went there at about 3.45 p.m. and recorded the statement of Mangal. He verified from Dr. Gaikwad and obtained certificate from him that patient was fit to give statement. That statement is produced on record at Exh.28. In the said statement it was stated by the deceased Mangal as follows:-

> "She stated to me that, her husband used to suspect her chastity and since last 6 months, he was ill-treating her by beating and abusing

> her. She further disclosed that, on 12-12-90 in the noon time at 2.45 p.m. the accused abused and beat her. Then he latched the door from inside. He alleged that she was having illicit relations with others. Then he poured kerosene oil on her person and set her on fire by lighting match-stick. At that time, her husband wanted to go out by opening the door. She also followed her and that time, the accused also sustained injuries to his hands. She shouted. Her sister, Asha, Sadashiv husband of Asha and her brother Yuvraj poured water on her person."

. He obtained her thumb impression as her fingers were burnt and also the endorsement of Dr. Gaikwad about the fitness of Mangal to make a statement.

13. Both S.E.M. Nilakhe and P.I. Ghag have stated that they had first verified from Dr. Gaikwad about the fitness of the patient. Their depositions cannot be doubted. In fact, there is no reason to doubt when they deposed that on enquiry Dr. Gaikwad had told them that patient was in a fit condition to make statement. P.W.4 S.E.M. has stated that when he went to the Ward Dr. Gaikwad was near the bed side of patient. It was Dr. Gaikwad who identified the patient and on enquiry told S.E.M. that patient was in a fit condition to make statement.

14. Then there is evidence of P.W.7 Dr. Sonawane who conducted the post mortem examination on the dead body. According to his evidence Mangal was having following 7 injuries on her person:-

1. IInd & IIIrd degree burns over face and neck - 5%.
2. Chest - 6%
3. Abdomen - 9%
4. Both upper limbs 18%
5. Back and buttocks- 9%
6. Right lower limbsanterior - 9%
7. Left lower limbs anterior- 9%.

Total Burns 88%.

. All the injuries were antemortem. The cause of death according to doctor was neurogenic and hypovolumic shock due to extensive IInd and IIIrd degree burns. The medical evidence supports and corroborates the dying declarations. If we consider the dying declarations and the medical evidence there is no doubt that Mangal had suffered homicidal death.

15. Dr. Sonawane had also examined the accused.

He was hospitalised in the same hospital from 12/12/1990 to 18/12/1990. The accused had following 9 injuries on his person.

1. Burns over back of left hand in area of 4 3/4" x 3" and anterior part of left hand wrist.

2. Superficial burns over posterior and palmer region of right hand.

3. Abraised linear like wound 1/2" long over bridge of the nose, oblique in direction.

4. C.L.W. 1/2"x1/4" over left eyebrow.

5. Superficial linear like lacerated wound 3/4"x1" long over left side chest just above axilla.

6. 1" long linear lacerated wound over right side chest pectoral region.

7. Superficial abraised wound over left side neck.

8. Abraised contusion 3" x 2" over left side back.

9. Contusion wheel mark 3" x 1/2" over back of left upper arm, oblique in direction.

. According to the doctor injury Nos.1 and 2 were burn injuries and injury nos.3 to 9 could be caused by hard and blunt object. Those injuries were fresh.

16. So far as the injuries received by the accused are concerned, they are minor injuries and, therefore, prosecution was not bound to explain them. Moreover, the relatives of Mangal i.e. her brother Yuvraj and her sister's husband Sadashiv having come on the scene immediately at the time of the incident, it was likely that the accused who had set Mangal ablaze and tried to escape must have been beaten by them. Moreover, Mangal also must have tried to resist the appellant when he was beating her and setting her on fire. Dr. Sonawane P.W.7 has deposed that injury nos.3 to 8 suffered by the accused were possible in a scuffle. He has further deposed that injury nos.3,5 and 7 on the person of the accused were possible by finger nails. Thus, injuries must have been caused to the accused because of the resistance put by wife-Mangal when he poured kerosene on her person and set her ablaze. Those injuries could have been possibly caused when Mangal was resisting assault on her by the appellant. Even the defence of the accused is that when Mangal caught fire from the flames of the stove Asha, Yuvraj and Chandrabai came and they attacked him. That was the natural reaction of the close relations of deceased. Thus the explanation can be found about the injuries on the person of the accused from the record itself.

17. It is pertinent to point out that the defence of the accused is absolutely inconsistent with the findings on record. In answer to question no.32 his defence is that Mangal lighted stove as she wanted to prepare tea and she caught fire from the high flames of the stove. When he raised the alarm PWs 1, 2, 3 and Sadashiv came there and attacked him with the sticks and kicks. The defence of Mangal catching fire is absolutely inconsistent with the spot panchanama, according to which the kerosene can was found empty in the room and there was smell of kerosene in the room. As per the C.A. report Exh.16 there was detection of kerosene residues on the burnt clothes of the deceased.

18. In the aforesaid circumstances, there is no doubt that the prosecution has proved the guilt of the appellant in respect of the aforesaid offences. We have, therefore, no hesitation in confirming the order of conviction and sentence recorded by the trial court against the appellant.

19. In the result, the order of conviction and sentence recorded by the Addl. Sessions Judge, Baramati, Pune on 25/11/1994 against the appellant-accused in Sessions Case No.31 of 1991 is confirmed and the appeal is dismissed.

. On the application of Mr. Shah, the appellant is given two weeks' time to surrender to his bail bond.

(S.S. Parkar, J.)

(Anoop V. Mohta,J.)